

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

ANAS ELHADY, <i>et al.</i> ,)	
)	
Plaintiffs,)	
v.)	Civil Action No. 1:16-cv-375 (AJT/JFA)
)	
CHARLES H. KABLE, <i>et al.</i> ,)	
)	
)	
Defendants.)	
_____)	

ORDER

Defendants have filed a Motion To Partially Vacate The Court's December 18, 2019 Order In Light Of Ten-Day Deadline [Doc. No. 344] (the "Motion"), in which Defendants seek to vacate that portion of the December 18, 2019 Order that certifies questions pursuant to 28 U.S.C. § 1292(b). Upon consideration of the Motion, the memorandum in support thereof and the Plaintiffs' response thereto, and for good cause shown, it is hereby

ORDERED that the Motion [Doc. No. 344] be, and the same hereby is, GRANTED; and it is further

ORDERED that the Court's Order dated December 18, 2019 [Doc. No. 341] together with the final judgment entered in connection therewith pursuant to Fed. R. Civ. P. 58 be, and the same hereby are, VACATED; and in its place, it is hereby

ORDERED pursuant to Fed. R. Civ. P. 54(b) that final judgment be, and the same hereby is, ENTERED against Plaintiffs and in favor of Defendants as to Counts II (substantive due process claim), IV (The Equal Protection Clause claim), and V (the non-delegation doctrine claim), which claims the Court dismissed on September 5, 2017 [Doc. No. 47] and as to which the Court expressly determines there is no just cause for delay; and it is further

ORDERED pursuant to 28 U.S.C. § 2201 that a declaratory judgment be, and the same hereby is, ENTERED in favor of the Plaintiffs and against Defendants in connection with their procedural due process claim in Count I and their Administrative Procedure Act claim in Count III, and the Court declares, as set forth in its Memorandum Opinion and Order dated September 4, 2019 [Doc. No. 323], that (1) Plaintiffs, or at least some of them, have standing to raise their constitutional challenges; (2) Plaintiffs have constitutionally protected liberty interests that are implicated by their inclusion in the TSDB; and (3) the DHS TRIP process through which Plaintiffs may challenge their inclusion in the TSDB is not constitutionally adequate to protect those liberty interests; and it is further

ORDERED that Defendants promptly review the listing of any named Plaintiff currently listed in the TSDB according to additional procedures to be added to a revised DHS TRIP process that are reasonably calculated to provide the required procedural due process, together with the creation of an adequate administrative record, with particular consideration given to (1) the threshold showing necessary to determine whether any such Plaintiff is entitled to such a review and the notice and explanation given to any Plaintiff determined not to meet that threshold; (2) the notice and opportunity to respond to any derogatory information; (3) the notice to be given Plaintiffs with respect to their TSDB status upon completion of that review; and (4) the opportunity for review and/or appeal of any adverse determination; and it is further

ORDERED that Defendants shall disclose those revised procedures to the Court for its review as to their constitutional adequacy, as well as the status of the named Plaintiffs with respect to any TSDB listing after a review under those revised procedures; and within forty-five (45) days of the date of this Order shall file a status report as to these revised DHS TRIP

procedures and Defendants' review of any Plaintiffs' placement on the TSDB under those revised procedures; and it is further

ORDERED that, notwithstanding any appeals, this action shall continue as appropriate pursuant to 28 U.S.C § 2202 with respect to any remaining claims or further necessary or proper relief based on the declarations and orders contained herein.

The Clerk is directed to forward copies of this Order to all counsel of record and to enter a final judgment pursuant to Fed. R. Civ. P. 58 with respect to the claims designated herein as final under Rule 54(b) and deemed final under 28 U.S.C. § 2201.



Anthony J. Trenga
United States District Judge

Alexandria, Virginia
December 27, 2019